

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RAUL UVALLES,

Plaintiff,

v.

KEVIN RUETER, et al.,

Defendants.

No. 2:23-cv-0160 DJC AC P

ORDER

Plaintiff, a state prisoner proceeding pro se, seeks relief pursuant to 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

I. Application to Proceed In Forma Pauperis

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). ECF Nos. 2, 5. Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time

the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

II. Statutory Screening of Prisoner Complaints

The court is required to screen complaints brought by prisoners seeking relief against “a governmental entity or officer or employee of a governmental entity.” 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are “frivolous, malicious, or fail[] to state a claim upon which relief may be granted,” or that “seek[] monetary relief from a defendant who is immune from such relief.” 28 U.S.C. § 1915A(b).

A claim “is [legally] frivolous where it lacks an arguable basis either in law or in fact.” Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). “[A] judge may dismiss . . . claims which are ‘based on indisputably meritless legal theories’ or whose ‘factual contentions are clearly baseless.’” Jackson v. Arizona, 885 F.2d 639, 640 (9th Cir. 1989) (quoting Neitzke, 490 U.S. at 327), superseded by statute on other grounds as stated in Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000). The critical inquiry is whether a constitutional claim, however inartfully pleaded, has an arguable legal and factual basis. Franklin, 745 F.2d at 1227-28 (citations omitted).

“Federal Rule of Civil Procedure 8(a)(2) requires only ‘a short and plain statement of the claim showing that the pleader is entitled to relief,’ in order to ‘give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (alteration in original) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)). “Failure to state a claim under § 1915A incorporates the familiar standard applied in the context of failure to state a claim under Federal Rule of Civil Procedure 12(b)(6).” Wilhelm v. Rotman, 680 F.3d 1113, 1121 (9th Cir. 2012) (citations omitted). In order to survive dismissal for failure to state a claim, a complaint must contain more than “a formulaic recitation of the elements of a cause of action;” it must contain factual allegations sufficient “to raise a right to relief above the speculative level.” Twombly, 550 U.S. at 555 (citations omitted). “[T]he pleading must contain something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right of action.” Id. (alteration in original) (quoting 5 Charles Alan Wright & Arthur

1 R. Miller, Federal Practice and Procedure § 1216 (3d ed. 2004)).

2 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to
3 relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting
4 Twombly, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual
5 content that allows the court to draw the reasonable inference that the defendant is liable for the
6 misconduct alleged.” Id. (citing Twombly, 550 U.S. at 556). In reviewing a complaint under this
7 standard, the court must accept as true the allegations of the complaint in question, Hosp. Bldg.
8 Co. v. Trs. of the Rex Hosp., 425 U.S. 738, 740 (1976) (citation omitted), as well as construe the
9 pleading in the light most favorable to the plaintiff and resolve all doubts in the plaintiff’s favor,
10 Jenkins v. McKeithen, 395 U.S. 411, 421 (1969) (citations omitted).

11 III. Complaint

12 Plaintiff alleges that defendants Reuter, Patel, Chen, and Yeh violated his rights under the
13 Eighth Amendment. ECF No. 1. However, though plaintiff makes various allegations about his
14 medical care, he does not identify any conduct by the named defendants. Id. at 4-7.

15 “Liability under § 1983 must be based on the personal involvement of the defendant,”
16 Barren v. Harrington, 152 F.3d 1193, 1194 (9th Cir. 1998) (citing May v. Enomoto, 633 F.2d
17 164, 167 (9th Cir. 1980)), and “[v]ague and conclusory allegations of official participation in civil
18 rights violations are not sufficient,” Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982)
19 (citations omitted). Because the complaint does not make any allegations against the named
20 defendants it fails to state any claims for relief.

21 IV. Leave to Amend

22 The complaint does not state any cognizable claims for relief and plaintiff will be given an
23 opportunity to file an amended complaint. If plaintiff chooses to file an amended complaint, he
24 must demonstrate how the conditions about which he complains resulted in a deprivation of his
25 constitutional rights. Rizzo v. Goode, 423 U.S. 362, 370-71 (1976). The complaint must also
26 allege in specific terms how each named defendant is involved. Arnold v. Int’l Bus. Machs.
27 Corp., 637 F.2d 1350, 1355 (9th Cir. 1981). There can be no liability under 42 U.S.C. § 1983
28 unless there is some affirmative link or connection between a defendant’s actions and the claimed

1 deprivation. Id.; Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, “[v]ague and
 2 conclusory allegations of official participation in civil rights violations are not sufficient.” Ivey v.
 3 Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982) (citations omitted).

4 Plaintiff is also informed that the court cannot refer to a prior pleading in order to make
 5 his amended complaint complete. Local Rule 220 requires that an amended complaint be
 6 complete in itself without reference to any prior pleading. This is because, as a general rule, an
 7 amended complaint supersedes any prior complaints. Loux v. Rhay, 375 F.2d 55, 57 (9th Cir.
 8 1967) (citations omitted), overruled in part by Lacey v. Maricopa County, 693 F.3d 896, 928 (9th
 9 Cir. 2012) (claims dismissed with prejudice and without leave to amend do not have to be re-pled
 10 in subsequent amended complaint to preserve appeal). Once plaintiff files an amended complaint,
 11 any previous complaints no longer serve any function in the case. Therefore, in an amended
 12 complaint, as in an original complaint, each claim and the involvement of each defendant must be
 13 sufficiently alleged.

14 In the event plaintiff chooses to file an amended complaint, he is further informed that “to
 15 maintain an Eighth Amendment claim based on prison medical treatment, an inmate must show
 16 ‘deliberate indifference to serious medical needs.’” Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir.
 17 2006) (quoting Estelle v. Gamble, 429 U.S. 97, 104 (1976)). This requires plaintiff to show (1) “a
 18 ‘serious medical need’ by demonstrating that ‘failure to treat a prisoner’s condition could result in
 19 further significant injury or the unnecessary and wanton infliction of pain,’” and (2) “the
 20 defendant’s response to the need was deliberately indifferent.” Id. (some internal quotation marks
 21 omitted) (quoting McGuckin v. Smith, 974 F.2d 1050, 1059-60 (9th Cir. 1992))

22 V. Plain Language Summary of this Order for a Pro Se Litigant

23 Your request to proceed in forma pauperis is granted. That means you do not have to pay
 24 the entire filing fee now. You will pay it over time, out of your trust account.

25 Your complaint will not be served because the facts you alleged are not enough to state a
 26 claim. You may amend your complaint to try to fix these problems. Be sure to provide facts that
 27 show exactly what each defendant did to violate your rights or to cause a violation of your rights.

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1 If you choose to file an amended complaint, it must include all claims you want to bring.
2 Once an amended complaint is filed, the court will not look at any information in the original
3 complaint. **Any claims and information not in the amended complaint will not be**
4 **considered.**

5 In accordance with the above, IT IS HEREBY ORDERED that:

6 1. Plaintiff's request for leave to proceed in forma pauperis (ECF No. 2) is GRANTED.


7 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff
8 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.
9 § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the
10 appropriate agency filed concurrently herewith.

11 3. Plaintiff's complaint fails to state a claim upon which relief may be granted, see 28
12 U.S.C. § 1915A, and will not be served.

13 4. Within thirty days from the date of service of this order, plaintiff may file an amended
14 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil
15 Procedure, and the Local Rules of Practice. The amended complaint must bear the docket
16 number assigned this case and must be labeled "First Amended Complaint." Failure to file an
17 amended complaint in accordance with this order will result in a recommendation that this action
18 be dismissed.

19 5. The Clerk of the Court is directed to send plaintiff a copy of the prisoner complaint
20 form used in this district.

21 DATED: October 16, 2023

22 
23 ALLISON CLAIRE
24 UNITED STATES MAGISTRATE JUDGE
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